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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding) APPLICATION OF CALIFORNIANS FOR
Policies, Procedures and Rules for the) RENEWABLE ENERGY (CARE) FOR
California Solar Initiative, the Self-) REHEARING OF D.07-12-007
Generation Incentive Program and Other)
Distributed Generation Issues.) Rulemaking 06-03-004
) (Filed March 2, 2006)
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I. INTRODUCTION

Pursuant to Rule 16.1, Intervenor Californians for Renewable Energy (“CARE”) hereby requests a rehearing of D.07-12-007, the Commission’s final “Opinion Granting Intervenor Compensation to Californians for Renewable Energy, Consumer Federation of California, and Green Power Institute for Contributions to California Solar Initiative Rulemaking” filed December 7, 2007 (hereinafter “Opinion”). CARE seeks only a limited review of the Opinion, asking the Commission to increase the hourly rate assigned to CARE’s lead counsel, Stephan C. Volker, from \$280 per hour to his market rate of at least \$450 per hour for work done in 2006. As discussed more thoroughly below, the Commission’s decision to assign Mr. Volker a rate

lower than his market rate – despite a plethora of uncontradicted evidence in the record demonstrating his actual and much higher rate – violated the Public Utilities Code and is based on a fundamental violation of his and his clients’ due process rights. The Commission’s refusal to properly determine Mr. Volker’s current, true market rate continues to hinder intervenor participation in important Commission proceedings by limiting Mr. Volker’s clients’ ability to retain counsel on Commission matters.¹ Mr. Volker’s rate, therefore, should be revised based on his market rates to at least \$450 for work done in 2006.

In the Opinion, the Commission reduced Mr. Volker’s requested hourly rates based on an hourly rate of \$250 assigned to him several years ago in a different proceeding. D.07-12-007, p. 27-29. The basis of that previous hourly rate, however, was *not that Mr. Volker’s market rate was then \$250*. Rather, the basis was that Mr. Volker’s client, the Sierra Club, had, on April 4, 2000 and prior to its retention of Mr. Volker, filed a Notice of Intent to Claim Compensation (“NOI”) which capped its future counsel’s hourly rate at \$250. Therefore, notwithstanding that Mr. Volker’s actual market rate in 2002 already exceeded \$300 (and in 2004, \$350), the Sierra Club only sought compensation at the rate stated in its NOI – \$250. Thereafter, the Commission determined that all assigned rates for work done in 2002 and 2003 represented market rates and instituted a rate-freeze based on those previously assigned rates. ALJ-184, D.05-11-031, and D.07-01-009.

The Commission’s proceedings capping future fees based on prior fee awards were

¹ CARE has previously sought to correct the Commission’s assignment of a non-market rate to Mr. Volker. Most notably, CARE sought judicial review of the Commission’s parallel rate determinations in D.06-04-018. *Californians for Renewable Energy v. The Public Utilities Commission*, Court of Appeal, First Appellate District, Case No. A115703.

conducted, however, without notice to the parties that would be affected in the future. Furthermore, the Commission arbitrarily assumed that past rates automatically represent market rates for those past time periods. Such an assumption does not take into account a myriad of relevant factors and circumstances underlying past fee awards – factors and circumstances demonstrating that all past fee rates *do not automatically reflect past market rates*. For example, here, Mr. Volker’s past fee award was not based on market rates. Instead, Mr. Volker adhered to rates established in his client’s NOI, which was filed prior to its selection of a lawyer for the case. Mr. Volker’s fee in that previous case therefore does not reflect his market rate – in fact, has nothing to do with his market rate – and, therefore, should not be used as a limiting factor on all future fee awards.

Application of Public Utilities Code section 1806, which directs that “[t]he computation of compensation awarded pursuant to Section 1806 shall take into consideration the market rates paid for persons of comparable training and experience who offer similar services,” requires that Mr. Volker’s time now be compensated at comparable market rates. As previously documented by CARE and Mr. Volker, the market rate for Mr. Volker, an environmental lawyer for over 33 years, was at least \$450 in 2006. The Commission’s refusal to modify its award in this proceeding, therefore, violates the Public Utilities Code.

Additionally, the Commission’s reliance on the rate freezing mechanism violates Mr. Volker’s due process rights because he was never given notice of the proceedings in which the Commission determined that a non-market rate assigned in a past fee award would permanently serve as the baseline for all future fee awards. This lack of notice deprived Mr. Volker of the ability to correct the Commission misapprehension that the prior fee award reflected a market

rate for Mr. Volker. Thus, the Opinion improperly determined that Mr. Volker should be compensated at a below-market rate instead of his market rate.

Accordingly, CARE respectfully applies to this Commission for a rehearing of the Commission's Opinion and asks that Mr. Volker's hourly rate be increased to at least \$450 for work done in 2006.

II. BACKGROUND

CARE filed its request for compensation on March 12, 2007.

On April 9, 2007, Southern California Edison Company ("SCE") filed a response to CARE's request.

On April 24, 2007, CARE filed a reply to SCE's response.

On November 6, 2007, the Commission issued its proposed decision granting, in part, CARE's request.

On November 21, 2007, CARE filed comments on the proposed decision, asking for, among other requests, a reevaluation of Mr. Volker's assigned rate.

On December 7, 2007, the Commission issued the Opinion, in which the Commission denied CARE's request to reevaluate Mr. Volker's rate.

In setting Mr. Volker's rates, the Opinion relied on a prior, non-market award of \$250 for work done in 2000-2001. D.07-12-007 at 27-29 citing D.05-02-003 and D.03-01-058. This 2000-2001 rate was awarded in A.99-12-025, wherein, *before* Mr. Volker's retention, Sierra Club had submitted an NOI "currently estimat[ing] that its [future] attorney will [provide services] . . . at a proposed hourly rate of \$250/hour." Sierra Club NOI, A.99-12-025, April 4, 2000.

Following the first phase of A.99-12-025, by D.03-01-058 dated January 30, 2003, the Commission awarded \$46,990.96 for Mr. Volker's services in 2000 and 2001 based on the NOI's \$250 rate. Importantly, D.03-01-058 noted that in previous litigation "*attorney Volker . . . has been awarded attorney's fees at the hourly rate of \$300* based on his extensive experience in the field of environmental litigation." *Id.* at 9, ¶ 6, emphasis added.

Thereafter, by D.05-02-003, dated February 10, 2005, the Commission granted additional compensation for Mr. Volker's services in 2002-2003 based on the same non-market rate provided in the NOI despite Mr. Volker's declaration dated February 23, 2004 establishing that he had previously been awarded fees in judicial proceedings at \$350 per hour.² Neither the Sierra Club nor Mr. Volker represented, nor did the Commission find, that the market value of Mr. Volker's services was at that time only \$250 per hour. Rather, the Commission simply accepted the \$250 rate provided in the NOI – a rate that Sierra Club had requested *prior to* Mr. Volker's involvement in the case. D.03-01-058 at 9, ¶ 6. The Commission, of course, gave Mr. Volker no indication that the non-market rate stated in the Sierra Club's NOI would *forever* saddle him with a vastly deflated pay range in all future Commission proceedings. *Id.*

Nonetheless, in a series of rate setting proceedings, the Commission subsequently decided, without notice to Mr. Volker or his clients, that all rates assigned to practitioners for work done in 2002 and 2003 should be deemed market rates and used as baselines to determine all future rates, adjusted only by slight cost of living increases. ALJ-184, D.05-11-031, and D.07-01-009. These decisions erroneously seized upon the rate of \$250 per hour assigned to Mr.

²Request for Compensation of Sierra Club and Supporting Declaration of Counsel, filed February 23, 2004 in A-99-12-025, at 13:13.

Volker in D.03-01-058 and D.05-02-033 and deemed it his market rate, despite the fact that the \$250 figure was *not based on a market rate*.

Instead of correcting its error, the Commission here calculated Mr. Volker's rates based on the *non*-market rate erroneously established for him. Specifically, the Opinion states:

In D.06-04-018, the Commission compensated Volker at \$270 / hour for work in 2004. That award was based on a prior compensation at a rate of \$250 / hour awarded in D.05-02-003 and D.03-01-058.

...

If we escalate Volker's 2004 rate by 0% for 2005 (see D.05-11-031) and by a 3% COLA for 2006, then round to the nearest \$5, Volker would receive \$280 / hour, the lower end of the range for attorneys with 13 or more years of experience.

Opinion at 28.

The Opinion's reduction in the rate requested for Mr. Volker was thus not based on his market rate. To the contrary, the rate assigned to Mr. Volker is *directly contradicted by the prior opinion's acknowledgment of Mr. Volker's higher market rate prior to 2002 of \$300/hour*. Also, the Commission completely overlooked the undisputed evidence presented in the request for compensation and in the comments on the proposed decision that Mr. Volker's market rate is now at least \$450 per hour, based on his 33 years' experience and numerous judicial fee awards including, as documented in the Exhibits to the comments, awards adjudicating his market rate at \$450 in 2004 and \$475 in 2005, and an expert's testimony confirming that \$475 per hour was, in 2006, "at the low end of, the prevailing market rates in the San Francisco Bay Area for attorneys with experience and qualifications similar to Mr. Volker" Comments at 8 and Appendix 3 thereto at Exhibits A-C.

III. ARGUMENT

The Opinion does not grant compensation for Mr. Volker's time at his market rate,

contrary to Public Utilities Code section 1806. Rather, D.07-12-007 calculates his hourly rate starting with a *non*-market rate of \$250 per hour estimated in an NOI filed in 2000 by the Sierra Club in A.99-12-025 before the Sierra Club's retention of Mr. Volker in that proceeding. The rate awarded to Mr. Volker in that proceeding was well below his adjudicated rate, a fact noted by the Commission in its award decision, as discussed above. This non-market rate was then erroneously declared his "market rate" when, without notice to Mr. Volker, the Commission in ALJ-184 and D.05-11-031 established benchmark rates for attorneys who had previously received Commission fee awards. The erroneous use of this non-market rate as a baseline for future awards violates Public Utilities Code section 1806 and the due process rights of Mr. Volker and his clients.

A. Stephan Volker's Rate Should Reflect his "Market Rate" as Required by Public Utilities Code Section 1806, Which Was at Least \$450 in 2006.

The Opinion's failure to determine and award Mr. Volker's market rate is inconsistent with section 1806, which directs that "[t]he computation of compensation awarded pursuant to Section 1804 *shall* take into consideration *the market rates* paid to persons of comparable training and experience who offer similar services." *Id.*, emphasis added. The Opinion's selection of a *non*-market rate of \$280 for Mr. Volker for 2006 in the face of undisputed evidence that his market rate was *at least* \$450 in 2006 is directly contrary to the statute.

Mr. Volker's market rate is established by this Commission's acknowledgment that Mr. Volker had received court-awarded fees at \$300 per hour before 2002 (D.03-01-058 at 9, ¶ 6), and by Mr. Volker's Declaration that: he had "32 years' experience as a practicing environmental lawyer in California," "[d]uring the past three decades [he has] actively participated, typically as the lead plaintiffs' attorney, in over 45 published cases in state and

federal courts,” he was “familiar with the market value of [his] services, based on declarations submitted by knowledgeable attorneys in numerous attorney fee motions in other proceedings,” and that based thereon, currently “[t]he market value of [his] services is between \$450 and \$650 per hour.” Request at 13 and Exh. 3 thereto.

CARE also submitted additional documentation of this rate, such as the San Francisco Superior Court’s award of \$450 per hour for all of Mr. Volker’s time in 2004 successfully prosecuting an action against the California Coastal Commission for violating environmental laws and the Marin Superior Court’s award of \$475 per hour for all of Mr. Volker’s time in 2005 successfully prosecuting an environmental action against the City of Richmond. Comments at 8 and Appendix 3 thereto at Exhibits A-C.

There is simply no evidence that Mr. Volker’s market value was less than the rates sought. No party presented evidence contrary to Mr. Volker’s testimony and the extensive documentation in the Conservation Groups’ comments. Accordingly, consistent with section 1806, the Commission should correct Mr. Volker’s rate to reflect the market rates paid to persons of comparable training and experience: at least \$450 per hour in 2006.

B. The Commission Must Award Mr. Volker’s Market Rate Consistent With the Due Process Rights of Mr. Volker and His Clients.

The Opinion awarded Mr. Volker just \$280 per hour on the grounds that the Commission had set \$250 as his market rate in ALJ-184 and D.05-11-031, relying in turn on the awards in D.03-01-058 and D.05-02-003, as discussed above. Neither ALJ-184 nor D.05-11-031, however, afforded Mr. Volker any notice,³ and neither actually considered any evidence of his

³ The first proceeding, which resulted in ALJ 184, was based on an informal letter survey sent to “over 40 regular participants in [PUC] proceedings,” of whom only 9 parties submitted

market rate. Rather, ALJ-184 and D.05-11-031 simply assumed, incorrectly, that rates previously awarded attorneys in PUC proceedings were their market rates.⁴ Although in some cases this may have been true, it was not true for the rates awarded Mr. Volker in D.03-01-058 and D.05-02-003. In fact, the \$250 non-market rate awarded Mr. Volker was so low that it depressed the low range for attorneys of 13+ years experience *below* the low range for attorneys with *less* (8-12 years) experience (D.05-11-131 at 11), a discrepancy the Commission admitted was “anomalous” (*id.* at 17).

The Commission’s purported but clearly erroneous determination of Mr. Volker’s market rate in proceedings of which Mr. Volker had no notice violates the Due Process Clauses of both the California and the United States Constitution. As stated by the U.S. Supreme Court, “[i]ngrained in our concept of due process is the requirement of notice Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act.” *Lambert v. People of the State of California* (1957) 355 U.S. 225, 228.

The procedural Due Process Clause of the California Constitution affords even broader protections than does that of the United States Constitution, and clearly forbids the unnoticed rate-setting procedure utilized by the Commission here. As discussed in *Ryan v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048, 1069-1071,

Our state due process constitutional analysis differs from that conducted pursuant

comments. ALJ-184 at 1-2. Mr. Volker was not among those surveyed, nor did he receive notice of the survey. The second proceeding resulted from a rulemaking (R.04-10-010) instituted by the Commission. D.05-11-031. Only four regulated utilities and four frequent intervenors participated in this proceeding; Mr. Volker received no notice of this proceeding. D.05-11-032 at 23-24.

⁴ALJ-184 at 9-10; D.05-11-031 at 28.

to the federal due process clause in that the claimant need not establish a property or liberty interest as a prerequisite to invoking due process protection Focused rather on an individual's due process liberty interest to be free from arbitrary adjudicative procedures . . . , procedural due process under the California Constitution is “much more inclusive” and protects a broader range of interests than under the federal Constitution According to our Supreme Court, it “has expanded upon the federal analytical base by focusing on the administrative process itself.”

Id., citations omitted.

Consistent with the foregoing principle, in *People v. Ramirez*, the California Supreme Court held that application of California’s Due Process Clause “must be determined in the context of the individual's due process liberty interest in freedom from arbitrary adjudicative procedures [and that] due process analysis must start not with a judicial attempt to decide whether the statute has created an 'entitlement' that can be defined as 'liberty' or 'property,' but with an assessment of what procedural protections are constitutionally required in light of the governmental and private interests at stake.” *Id.*, 25 Cal.3d at pages 263-264; *accord*, *In re Jackson* (1987) 43 Cal.3d 501, 510; *Hernandez v. Department of Motor Vehicles* (1981) 30 Cal.3d 70, 81, fn. 12. The *Ramirez* Court explained that “the due process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty.” *Id.* at 268.

Contrary to the foregoing and despite the fact that Mr. Volker’s interests (and those of his clients) in future fee awards would be clearly and adversely affected, the Commission failed to notify Mr. Volker before fixing his future rate based on an admittedly “anomalous” non-market award. D.05-11-031 at 17. ALJ-184 made no attempt to notify all counsel who had appeared in previous PUC proceedings. Instead, the ALJ merely “wrote to over 40 regular participants in

[Commission] proceedings, including frequent intervenors and utilities from the various regulated industries [and] invited comments and suggestions to begin development of this annual process.” ALJ-184 at 1. This notice to some PUC *insiders* did not warn other practitioners such as Mr. Volker that their future rates would be fixed indefinitely by the proceeding.

Thus, Mr. Volker, along with any other attorney not on this Commission’s selective mailing list for the proceeding, was denied notice of the proceeding that converted *all* of the 2003 rates into “reasonable market rates” to be applied (with slight cost of living modifications) to *all* future fee awards. As such, this Commission carried out “arbitrary adjudicative procedures,” denying Mr. Volker and others their right to “fair and unprejudicial decision-making.” *Ryan, supra*, 94 Cal.App.4th at 1070-71. The Commission’s overbroad attempt in ALJ-184 and D.05-11-031 to fix all future rates without notice to those affected denied Mr. Volker any opportunity to correct the Commission’s mistaken reliance on non-market rates.

In sum, the attorney rate setting mechanism established in ALJ-184 and D.05-11-031 cannot be applied constitutionally to Mr. Volker, or to any other parties who were not afforded notice of these proceedings. Because Mr. Volker did not receive proper notice of the proceedings, he is not bound by the resulting decisions and his compensation here should be based on the undisputed record evidence that his market rate was at least \$450 in 2006.

IV. REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 16.3, CARE hereby requests oral argument on this matter because CARE’s application for rehearing “presents legal issues of exceptional public importance.” Rule 16.3(a)(3). The Commission’s current rate setting mechanism unconstitutionally limits recovery by CARE and other similarly-situated intervenors. This imbalance creates an uneven playing

field for participants in Commission proceedings and discourages, rather than encourages, public participation in the Commission's important decisionmaking processes. As such, oral argument is necessary to fully illuminate the important issues raised by this application.

In a parallel proceeding, Friends of the Eel River and California Sportfishing Protection Alliance are filing a similar application for rehearing on Mr. Volker's hourly rate. For purposes of efficiency, CARE requests that its application be heard at the same time as the application of Friends of the Eel River and California Sportfishing Protection Alliance .

V. CONCLUSION

CARE seeks an adjustment in its attorney's rate not only to bring parity with other intervenors to the present fee award, but also, and more importantly, to ensure that future participation in Commission proceedings will not be hindered by the current disparity in attorney fee awards.

Dated: December 20, 2007

Respectfully submitted,

By: /s/ STEPHAN C. VOLKER
STEPHAN C. VOLKER
Attorney for Intervenor CARE

DECLARATION OF COUNSEL

I, Stephan C. Volker, hereby declare:

1. I am counsel for intervenor CARE and have personal knowledge of the following matters.

2. Annexed as Exhibit 1 hereto is my Biographical Statement. I am requesting a rate of at least \$450 per hour for work done in 2007 based on my three decades of experience in environmental and regulatory litigation. Prior awards in the PUC have not reflected my market rate, as defined in the Public Utilities Code, and therefore I ask that the Commission reevaluate my assigned rate based on my experience, as documented below.

3. I have 33 years' experience as a practicing environmental lawyer in California, and have been awarded attorney's fees by state and federal courts and the CPUC on numerous occasions. I have extensive experience in the field of environmental litigation. During the past three decades I actively participated, typically as the lead plaintiffs' attorney, in over 45 published cases in state and federal courts in California, Washington, Alaska, Montana, and Arkansas. My most recent appellate victory, *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, is a landmark ruling under the California Environmental Quality Act.

4. In October 2005 I received a judicial award of fees in *Sierra Club v. Coastal Commission, et al.*, San Francisco Superior Court Case No. CPF 03-503433, wherein the Court found that my "reasonable hourly rate" was \$450 / hour for work done in 2004. Exhibit 2 hereto at 2:17. In September 2006 I received a judicial award of fees in *Citizens for the Eastshore State Park v. City of Richmond, et al.*, Marin County Superior Court Case No. CV 052241, wherein

the Court found that my “reasonable hourly rate[] of compensation” was \$475 / hour for work done in 2005. Exhibit 3 hereto at 3:19. Based on those awards and the documentation provided for them, and my 33 years’ experience in prosecuting fee awards, I believe that my market rate is between \$450 and \$650 per hour.

5. As an example of my recognized expertise in environmental law, I was selected by the California State Bar Association’s Environmental Law Section to give presentations on recent developments in CEQA caselaw at the Section’s annual Environmental Law Conference in Yosemite last October. I was also selected by Continuing Legal Education International to give presentations on CEQA at its annual seminars for environmental law practitioners in Los Angeles and Sacramento last August and September.

6. In addition, I have significant pertinent Commission experience, as summarized in the following table:

Cause	Client	Case No.
Rulemaking on Commission’s own motion to provide for mitigation of local rail safety hazards within California	Friends of the River, et al.	R.93-10-002
Application of Pacific Gas and Electric Company for authorization to sell the El Dorado Hydroelectric Project to El Dorado Irrigation District Pursuant to Public Utilities Code §851	League to Save Sierra Lakes, et al.	A.98-04-016
Application of Pacific Gas and Electric Company to Report Assessments of Inventory Balances and to Address Appraisal	Friends of the Eel River, et al.	A.98-05-022
Application of Pacific Gas and Electric Company to Value Hydroelectric Plants and Related Assets Pursuant to Public Utilities Code Sections 367(b) and 851	Friends of the Eel River, et al.	A.99-09-053

Cause	Client	Case No.
Application of Valencia Water Company (U34-W) seeking approval of its updated Water Management Program as ordered in Commission Resolution W-4154 dated August 5, 1999	Angeles Chapter Sierra Club, et al.	A.99-12-025
Application for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Jefferson-Martin 230 kV Transmission Project	Californians for Renewable Energy	A.02-09-043
Rulemaking Regarding Policies, Procedures, and Rules for the California Solar Initiative, etc.	Californians for Renewable Energy	R.06-03-004
Carol Dominguez v. PG&E	Californians for Renewable Energy	C.07-03-006

7. I have also participated in numerous administrative proceedings before other state, local and federal regulatory bodies bearing some similarities to the PUC for decades, including the following illustrative proceedings during the past 15 years:

Cause	Agency and Years	Case No.
Marine Environmental Consortium v. Washington Department of Ecology	Washington Pollution Control Hearings Board 1990-1992	In re NPDES Permit Nos. WA-004037-1, et al.
The Wilderness Society v. Haste	U.S. Interior Board of Land Appeals 1992-1994	IBLA 92-537
North Cascades Conservation Council and Washington Environmental Council v. Chelan County Board of Adjustment, et al.	State of Washington Shorelines Hearings Board 1994-1999	SHB No. 93-9
North Cascades Conservation Council and Washington Environmental Council v. Chelan County Board of Commissions	Eastern Washington Growth Planning Hearings Board, State of Washington 1994-1999	GPHB No. 93-1-0001

Cause	Agency and Years	Case No.
Friends of the Navarro Watershed, et al. v. Unnamed Illegal Diverters of Water from Navarro River, etc., et al.	State of California Water Resources Control Board 1994-2000	Water Rights Applications 29711, etc.
The Wilderness Society v. Regional Forester G. Lynn Sprague	U.S. Department of Agriculture, Chief, U.S. Forest Service 1995-2003	Appeal No. 95-13-00-0035-A217
Marine Environmental Consortium, et al., v. State of Washington Department of Ecology, et al.	State of Washington Pollution Control Hearings Board 1996-1999	PCHB Nos. 96-257, et al. (applications for NPDES permits for salmon net-pen waste discharge permits)
League to Save Sierra Lakes, et al., v. El Dorado County Water Agency	State of California Water Resources Control Board 1996-2001	Water Appropriation App. Nos. 29919-29922 and Petition for State-Filed App. No. 5645
Friends of the Eel River, et al., v. Pacific Gas & Electric Company	Federal Energy Regulatory Commission 1996-2006	Application for License Amendment for Hydroelectric Project 77-110 on the Eel River, California
Alpine County, et al., v. Pacific Gas & Electric Company and El Dorado Irrigation District	Federal Energy Regulatory Commission 1997-1999	Application to Amend Hydropower License for Project No. 184 for Construction of a Dam and Canal on the South Fork American River, California
Save Medicine Lake Coalition v. Calpine	Siskiyou County Air Pollution Control District Board of Directors 1999	Application for Authority to construct geothermal facilities in the Medicine Lake Basin

Cause	Agency and Years	Case No.
California Sportfishing Protection Alliance, et al. v. Sonoma County Water Agency	State of California Water Resources Control Board 2000-2007	Application Nos. 12919A, et al. to Add Points of Diversion and Rediversion to Water Rights Permits 12947A, et al.
Friends of the Eel River, et al., v. Pacific Gas & Electric Company, et al.	Federal Energy Regulatory Commission 2001-2007	Docket No. ER02-455-000, et al., Docket No. CP 02-39-000 et al., and Project Nos. 77-1116, et al. Regarding Relicensing Applications on PG&E Hydroelectric Facilities Throughout California
Voices for Rural Living v. Shingle Springs Band of Miwok Indians	Interior Board of Indian Appeals 2006-2007	IBIA 07-034-A

8. I have recovered dozens of attorney fee awards under state and federal fee-shifting statutes from state and federal courts and administrative agencies over the past 33 years, aggregating several million dollars in recoveries. In these cases (save those before the California Public Utilities Commission to date) my recovery was usually based on my market rate in the relevant legal community. Based on my experience documenting the market value of my services in these cases, I am familiar with my market rate.

9. As documented above, my current market rate is between \$450 and \$650. An additional illustrative declaration documenting this fact is the Declaration of Michael Traynor in Support of Petitioner's Motion for Attorneys' Fees and Litigation Costs filed in April 2006 in Marin Superior Court in which Mr. Traynor attests that \$450 per hour is "within, albeit at the low end of, the prevailing market rates in the San Francisco Bay Area for attorneys with

experience and qualifications similar to Mr. Volker.” Exhibit 4 hereto at 4:1-3.

I declare under penalty of perjury that the foregoing facts are true of my personal knowledge, that I am competent to and if called would so testify, and that this declaration was executed on December 20, 2007, in Oakland, California.

/s/ STEPHAN C. VOLKER
STEPHAN C. VOLKER

PROOF OF SERVICE

I am a resident of the United States and of the State of California. I am employed in the County of Alameda. My business address is 436 - 14th Street, Suite 1300, Oakland, California 94612. My business telephone number is (510) 496-0600, and fax number is (510) 496-1366. I am over the age of eighteen years. I am not a party to the within action or proceeding. On December 20, 2007, I served the following document(s):

APPLICATION OF CALIFORNIANS FOR RENEWABLE ENERGY (CARE) FOR REHEARING OF D.07-12-007

by arranging for the e-mailing of the above-entitled document and attachments to the parties' e-mail addresses indicated on the attached list of counsel or, if counsel has no e-mail address availability, said documents were enclosed in an envelope and whereby I placed the envelope(s) for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for e-mailing and collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid, addressed as listed on the attached following pages.

I declare under penalty of perjury that the foregoing is true and correct. Executed December 20, 2007, at Oakland, California.

/s/ Teddy Ann Fuss

Teddy Ann Fuss